

The complaint

Mr S complains that Santander UK Plc (“Santander”) unfairly declined his claim under the Consumer Credit Act 1974 (“CCA”) in relation to the purchase of a timeshare product he paid for using his credit card.

What happened

In or around June 2016, Mr S agreed to purchase a timeshare product from a supplier – who I’ll refer to as “S”. Mr S says that the price agreed was €13,871. Mr S funded this with a payment of €2,500 using his Santander credit card, the balance of €11,371 being paid by bank transfer.

In May 2022, using a professional representative (“the PR”), Mr S submitted a claim to Santander under Section 75 of the CCA (“S75”). The PR said S had misrepresented the timeshare product to Mr S. And it was those misrepresentations that persuaded him to agree to the purchase. They held Santander jointly liable for the misrepresentations under S75. In particular, the PR said:

- the product was sold as an investment contrary to Regulation 14 of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (“the TRs”);
- the product purchase hasn’t sold requiring annual maintenance fees to be paid when the main objective was to purchase the product as an investment; and
- fees have continued to increase.

The PR went on to say that as S are now in liquidation, they can’t provide the service sold. They also said that having been sold as an investment, S told Mr S they would sell the timeshare product for him. But they’re now unable to do that having entered into a liquidation process. The PR believes these aspects constitute a breach of contract which Santander are jointly liable for under S75.

Other allegations were included within Mr S’s claim. In particular:

- the payment of commission to S was hidden from Mr S; and
- the timeshare product was sold to Mr S under extreme pressure.

Santander didn’t uphold Mr S’s claim. In response, they didn’t agree there was any evidence to suggest there’d been a breach of contract. They also didn’t agree that pressure selling (as alleged) constituted a breach of contract. Or that there was any evidence of misrepresentation. Further, Santander said that the PR had subsequently confirmed that the alleged maintenance fees had not actually been requested or charged to Mr S.

The PR didn’t agree with Santander’s findings. So, asked this service to consider Mr S’s complaint about the claim outcome from Santander. One of this service’s investigators consider all the information and evidence provided. Having done so, they didn’t think the documentation showed that Mr M had actually bought a timeshare product, so didn’t think Mr S’s complaint should be upheld. The investigator didn’t agree there was any evidence to support the alleged misrepresentations, or to suggest there’d been a breach of contract.

In response to our investigator’s findings, the PR said that if the product purchased wasn’t a timeshare, then alternatively it falls within the definition of a Collective Investment Scheme

("CIS") under Section 235 ("S235") of the Financial Services and Markets Act 2000 ("FSMA"). And as S were neither authorised to establish and operate a CIS, nor exempt from that authorisation, they've contravened the 'general prohibition in Section 19 ("S19") of FSMA. The PR suggest such a breach has led to the creation of an unfair debtor-creditor relationship.

As an informal resolution couldn't be achieved, Mr S's complaint was passed to me to consider further. Having done that, while I was inclined to reach the same outcome as our investigator, I considered a number of issues which I don't feel were previously fully addressed. So, I issued a provisional decision on 1 February 2024 giving both sides the chance to respond.

In my provisional decision, I said:

Relevant Considerations

When considering what's fair and reasonable, DISP 3.6.4R of the Financial Conduct Authority ("FCA") Handbook means I'm required to take into account; relevant law and regulations, relevant regulatory rules, guidance and standards and codes of practice; and, where appropriate, what I consider was good industry practice at the relevant time.

S75 provides protection for consumers for goods or services bought using credit. Mr S paid, in part, for his purchase with a credit card issued by Santander. So, it's therefore possible that S75 applies here. This means that Mr S would be afforded the protection offered to borrowers like him under those provisions. And as a result, I've taken this section into account when deciding what's fair in the circumstances of this case.

It's important to stress that this service's role as an Alternative Dispute Resolution Service ("ADR") is to provide mediation in the event of a dispute. The complaint being considered here specifically relates to whether I believe Santander's treatment of Mr S's claim was fair and reasonable given all the evidence and information available. This service is not afforded powers to decide a legal claim. While the decision of an ombudsman can be legally binding, if accepted by the consumer, we do not provide a legal service.

Where evidence is incomplete, inconclusive, incongruent or contradictory, my decision is made on the balance of probabilities – which, in other words, means I've based it on what I think is more likely than not to have happened given the evidence that's available from the time and the wider circumstances. In doing so, my role isn't necessarily to address, in my decision, every single point that's been made. And for that reason, I'm only going to refer to what I believe are the most salient points having considered everything that's been said and provided.

Misrepresentation (S75)

For me to conclude there was a misrepresentation by S in the way that has been alleged, generally speaking, I would need to be satisfied, based on the available evidence, that S made false statements of fact when selling the product purchase to Mr S in 2016. In other words, that they told Mr S something that wasn't true in relation to one or more of any points raised. I would also need to be satisfied that these misrepresentations were material in inducing Mr S to enter the contract. This means I would need to be persuaded that Mr S reasonably relied on any false statements when deciding to complete his purchase.

Allegations have been made specifically relating to the purchase referenced above. The difficulty I have is identifying what was actually said at the time of the sale. The PR have provided limited details and evidence to support the misrepresentations Mr S says S made, although I acknowledge he does say he was told these things. So,

I've thought about this alongside the limited evidence that's available from the time of her purchase.

Although not determinative of the matter, I've not seen any specific evidence from the time of the sale, such as marketing material or any of the wider purchase documentation. The document provided by the PR makes no reference to a timeshare product. It appears to be an agreement to purchase a 10% shareholding in a company, with the balance of shares held by S. And having considered the document very carefully, I can find no reference to any of the aspects referred to as misrepresentations. Specifically, that the purchase constituted an investment in a timeshare that S would later sell for Mr S. Neither is there any reference to maintenance charges or fees that may (or may not) be payable.

So, based upon the documentation and evidence provided, I can't reasonably conclude that S misrepresented the purchase in the manner alleged.

Breach of contract (S75)

Having considered all the documentation provided, I've not been able to find anything to support the contractual obligations that the PR suggests S have failed to fulfil as a consequence of the liquidation process. As I've already concluded above, I can't say, with any certainty that the purchase Mr S made constituted an investment. Or that S had a contractual obligation to subsequently sell anything that Mr S had purchased. I haven't seen anything to support those assertions. So, on balance, I can't reasonably say there was an actionable breach of contract that Santander may ultimately be liable for under S75.

Other allegations

The PR suggest that the payment of commission was hidden from view. This suggests that S received a commission payment associated with the purchase Mr S completed in June 2016. But the PR haven't explained the basis of any alleged commission payment, or from whom it is alleged to have been received. By implication, it could be it's suggested that Santander paid a commission to S. But as the provider of credit card services to Mr S, I fail to see why that might have occurred. And I haven't seen any evidence to suggest that happened here. In any event, I don't think this particular allegation constitutes either misrepresentation or breach of contract under S75.

The PR also allege that Mr S's purchase resulted from extreme pressure exerted by S on Mr S. But allegations of pressure don't constitute misrepresentation or breach of contract under S75. So, I don't think this is something I can consider further here.

In response to our Investigator's findings, the PR said, if it's accepted the purchase wasn't for a timeshare product, it therefore constitutes a CIS under S235 of FSMA. And as a consequence, a breach of S19 of FSMA. The PR suggests this led to an unfair debtor-creditor relationship.

At the outset, I've seen no evidence to support that allegation. Further, the alleged breach of S19 of FSMA and any resultant unfairness appears to constitute a new allegation that wasn't included within the original claim. And a breach of FSMA in the way presented doesn't, as I understand, constitute misrepresentation or breach of contract under S75.

In the event that Mr S wishes to pursue that allegation, I believe it should be presented as a separate claim and/or complaint. I can't see that has happened here. So, Santander haven't been given the opportunity to investigate and respond. Because of that, I don't believe it would be fair or reasonable for me to consider that particular allegation further as part of the complaint I'm considering here.

Summary

I would like to reassure Mr S that I've carefully considered everything that's been said and provided. Having done so, I haven't found any evidence to support the various allegations included in his claim. As a consequence, I can't say that Santander's response to his claim was ultimately unfair or unreasonable. So, I don't currently intend to ask them to do anything more.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Santander responded to my provisional findings confirming they had nothing further to add.

Despite follow up from this service, neither the PR nor Mr S have acknowledged receipt of my provisional decision. And they haven't provided me with any new evidence or information to consider.

In the circumstances, I've no reason to vary from my provisional findings. And for the reason included within those findings, I will not be asking Santander to do anything more here.

My final decision

For the reasons set out above, don't uphold Mr S's complaint

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 29 March 2024.

Dave Morgan
Ombudsman